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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 478

FIDES, A. G.,

Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

PETITION FOR RE-HEARING.

LAWRENCE R. CONDON,
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To the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Fides, A. G., respectfully shows to this Court the following:

1. That your petitioner heretofore applied to this Court for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit to review a judgment or decree of that Court entered August 16, 1943, sustaining a deficiency surtax and penalty aggregating $11,255.33 assessed by the above named respondent against petitioner for 1936, on the ground that petitioner was a personal holding company subject to the provisions of Section 351 of the Revenue Act of 1936.

2. On information and belief that petitioner's said application was denied by this Court on or about December 13, 1943.

3. Petitioner now respectfully applies to this Court for a re-hearing of its said application for a writ of certiorari to review the aforesaid decree of said Circuit Court of Appeals and alleges that the grounds therefor are the following:

(a) That, in denying petitioner's said application, this Court apparently overlooked the language of Section 119(a)(2)(B) of the Revenue Act of 1936, which provides that any dividends paid by petitioner for that year were not considered or treated as income from sources within the United States; that petitioner's stockholders would, therefore, not be liable to pay either income or surtaxes on any dividends received by them from petitioner; and also the wording of Section 27(h) of the Revenue Act of 1936, which provides that, if petitioner's stockholders were not liable for payment of taxes thereon, petitioner would not be allowed a credit for the distribution of its earnings.

(b) That this Court apparently overlooked the fact that the result of the decree sought to be reviewed is absurd, unreasonable and unjust in that petitioner is held liable for the surtax provided by Section 351 of the Revenue Act of 1936 if it did not distribute its earnings and it is still held liable for the surtax if it did distribute its earnings, while other personal holding companies, whose stockholders were liable for income or surtax or both, could escape the surtax entirely by distributing their earnings to their stockholders.

(c) That this Court apparently overlooked the fact that the assessment of a surtax against petitioner, a citizen of and domiciled in Switzerland, which transacts no business and has no office or place of business within the United States, all of whose stockholders are nonresident aliens who transact no business and who have no office or place of business

within the United States, in substance and in effect discriminates against petitioner and contravenes the provisions of the existing treaty between the Republic of Switzerland and the United States of America. (Treaty of Commerce and Friendship, Nov. 9, 1855, United States Statutes at Large, Vol. 11, p. 587; Vol. 18, part 2, p. 748.)

(d) That, in denying petitioner's application for a writ of certiorari, this Court apparently overlooked the fact that the decree of the Circuit Court of Appeals, which petitioner seeks to have reviewed is in direct conflict with many decisions of this Court rendered from 1818 to the present time, in that it construed the words "every corporation" set forth in the statute to mean every corporation wherever situated rather than only those corporations properly subject to the taxing jurisdiction of the United States.

WHEREFORE petitioner respectfully prays that this Court grant petitioner a re-hearing of its application for a writ of certiorari to review the aforesaid decree of the United States Circuit Court of Appeals for the Fourth Circuit.

And your petitioner will ever pray.

FIDES, A. G.

By LAWRENCE R. CONDON,
Counsel.

LAWRENCE R. CONDON, counsel for FIDES, A. G., the petitioner named in the foregoing petition, respectfully certifies to this Honorable Court that he is familiar with all the proceedings heretofore had herein and that petitioner's application for a re-hearing of its petition for a writ of certiorari to review the decree of the United States Circuit Court of Appeals for the Fourth Circuit is presented to this Court in good faith and is not presented for delay.

Dated, January 6, 1943.

LAWRENCE R. CONDON,
Counsel for Petitioner.